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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (1) of the Optional Protocol, concerning communication No. 69/2014*,**

Communication submitted by:	T.S. (represented by counsel, Valentina Frolova and Sergey Golubok)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	7 May 2014 (initial submission)
References:	Transmitted to the State party on 11 July 2014 (not issued in document form)
Date of adoption of decision:	28 February 2017

* Adopted by the Committee at its sixty-sixth session (13 February-3 March 2017).

** The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Bandana Rana, Patricia Schulz, Wenyan Song, and Aicha Vall Verges.

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1. The author of the communication is T.S., a Russian citizen born in 1986, who claims to be a victim of violations by the Russian Federation of articles 1, 2 (b), (c), (d), (e), (f) and (g) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel, Valentina Frolova and Sergey Golubok. The Optional Protocol entered into force for the Russian Federation on 28 October 2004.

Facts as submitted by the author

2.1 The author is a teacher living in Saint Petersburg. She explains that she met V.S. at a social event on 10 June 2012 and on several occasions thereafter. V.S. repeatedly asked her to have sexual intercourse with him, but she refused.

2.2 On 4 July 2012, V.S. invited the author to have dinner at his apartment and watch movies. They met at 11 p.m. at a subway station in Saint Petersburg and went to his apartment. Once they arrived, he insisted on having sexual intercourse with her. She refused repeatedly and he became aggressive. V.S. was very drunk. The author was afraid. She did not want to have sexual intercourse with V.S. and repeatedly explained that to him. Against her will, however, he undressed her, pushed her onto the bed and forcibly held her down with the weight of his body. He proceeded to have sex with her for approximately one hour.[1] He left the apartment almost immediately thereafter and returned about an hour later. The author was in shock, "unable to collect herself", and spent the night at his apartment. She left the next day and never saw him again. Subsequently, she approached a non-governmental organization (NGO), the Crisis Centre for Women, where she received counselling.

2.3 On 19 September 2012, the author filed a complaint before the Saint Petersburg investigation department, a unit of the Investigative Committee of the Russian Federation, explaining that she had been a victim of sexual violence perpetrated by V.S. On the same day, the complaint was forwarded to the Kalininsky district investigating agency for preliminary examination. On 1 October, the head of the agency transmitted the author's complaint to an investigator, K., with instructions to question the author and V.S. to establish whether a rape had occurred.

2.4 The author was questioned by the investigator on 4 October 2012, during which she explained, among other things, that: (a) although the alleged perpetrator had not used physical force and had not threatened her, she had been scared because of his loud voice, aggressive behaviour and drunkenness; (b) the alleged perpetrator had pinned her to the bed with the weight of his body; (c) she was aware of the alleged perpetrator's violent criminal record and feared being assaulted if she resisted or attempted to call his roommate, P., who was in the room next door; and (d) she did not leave the apartment after the alleged rape because she was "in a stupor".

2.5 On 1 November 2012, the investigator wrote to the author to indicate that the alleged perpetrator's actions did not constitute a crime within the meaning of articles 131 and 132 of the Criminal Code, given that no violence or threat of violence had been used by V.S. and that she had not been prevented from leaving the apartment freely. The author complained to the Kalininsky District Court on

[1] The author explained that he penetrated her vagina and forced her to have both anal and oral sex.

14 January 2013, noting that the investigator had failed to open a criminal case on the basis of her complaint.[2] The investigator launched a preliminary investigation on 19 February but, two days later, issued a decision not to have a criminal case opened. The investigator, in her decision, merely repeated the content of her letter of 1 November 2012 and noted "the presence of sufficient data indicating the absence of elements of a crime within the meaning of articles 131 and 132 of the Russian Criminal Code". She also indicated that "the actions committed by V.S. towards T.S. carry no crime within the meaning of articles 131 and 132 of the Criminal Code of the Russian Federation, given that those actions should have been committed with the use of violence or with the use of a threat thereof against a victim or other person, or in taking advantage of the victim's helpless condition". Given that the investigator had conducted a preliminary investigation, the District Court decided on 27 February to discontinue the examination of the complaint, considering it moot.

2.6 On 28 March 2013, the author filed a second complaint before the District Court against the investigator's decision of 21 February.[3] On 19 April, the head of the investigating agency quashed the decision and instructed the investigator to conduct another preliminary investigation. Consequently, on 8 May, the District Court decided to discontinue the proceedings, given that the impugned decision had already been quashed. On 16 May, the investigator again refused to initiate criminal proceedings, without having conducted further investigative steps. In her decision of refusal, she merely repeated the content of her decision of 21 February.

2.7 On 23 May 2013, the author filed a third complaint before the District Court against the decision of 16 May. On 11 July, however, the District Court again discontinued the proceedings because, on 3 July, the head of the investigating agency had quashed the decision of 16 May. The investigator was again instructed to conduct another preliminary investigation. After having heard the alleged perpetrator, on 1 August, the investigator issued another decision, again refusing to open a criminal case in the absence of the use of violence or threat of violence against the author.[4] During questioning, V.S. denied having had sexual intercourse with the author on 4 July 2012 and indicated that she had never been to his apartment. He also said that "the reason that [she] had approached the police was his [non-reimbursed] debt [to her] and her psychological trauma connected to her unsatisfied sexuality".[5]

2.8 On 14 October 2013, the author complained to the District Court regarding the decision of 1 August. On 25 October, the head of the investigating agency quashed the decision and ordered that another preliminary investigation be carried out within

[2] In her first complaint to the District Court and in subsequent complaints, the author referred to violations of her rights under articles 1, 2 and 5 (a) of the Convention and to violations of articles 3, 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[3] It is to be noted that an appeal against the decision taken by the investigator could be filed with the head of the investigating agency, to the prosecutor for Kalininsky district or to the District Court.

[4] A relevant part of the decision of 1 August reads as follows: "In order to prosecute a person for committing crimes within the meaning of articles 131 and 132 of the Criminal Code, the lack of consent of a victim to have sexual intercourse could not be found as sufficient."

[5] The author had lent him some money.

30 days. On 29 October, the District Court discontinued the proceedings. On 6 November, the author appealed against the decision of the District Court, but the decision was upheld by the Saint Petersburg City Court on 23 December. The City Court held that the decision of the investigator already had been quashed by the head of the investigating agency, that the investigator had been requested to conduct another investigation and that the District Court had been correct in discontinuing the proceedings.

2.9 The author informed the Committee that, to date, she was not aware of any further steps taken by the investigating agency to conduct additional investigations and that no criminal proceedings had been initiated against V.S.[6] She also clarified that there were no grounds under Russian law to request the replacement of the investigator assigned to her case.

Complaint

3.1 The author claims that the State party has violated articles 1, 2 (b), (c), (d), (e), (f) and (g) and 5 (a) of the Convention because the authorities failed to react promptly and effectively to her claim of rape and failed to investigate her complaint.

3.2 The author submits that her complaint was not investigated and that the alleged perpetrator was not sanctioned owing to the State party's failure to incorporate a definition of rape into its national legislation in line with international standards. These systemic deficiencies of Russian criminal legislation should be read in the light of articles 1 and 2 of the Convention. She holds, in particular, that articles 131 and 132 of the Criminal Code do not allow for the prosecution of sexual violence unless the perpetrator used violence or the threat thereof, which is contrary to the Committee's jurisprudence.[7] She also argues that the failure of the State party to criminalize non-consensual sexual intercourse in all circumstances and to duly investigate, prosecute and sanction the alleged perpetrator constitutes a violation of article 2 (b), (c), (d), (e), (f) and (g) of the Convention.

3.3 With regard to article 5 (a), the author claims that a stereotyped understanding of sexual violence has led to the absence of prompt and effective investigations by the investigating agency in response to her criminal complaint.[8] She also contends that the approach of the investigator was based on stereotypes and preconceptions about "normal" and "typical" behaviour of victims of rape before, during and after the crime and that the consent of the woman to be involved in sexual intercourse was presumed. For example, she explains that the investigator blamed her for not resisting physically, not crying out for help and not leaving the apartment after the crime.

[6] Following a letter sent to the author, a status inquiry was made by the author on 19 May 2014 to the investigating agency, but it remains unanswered.

[7] The author refers to communication No. 18/2008, *Vertido v. the Philippines*, views adopted on 16 July 2010, and the Committee's general recommendations No. 19 (1992) on violence against women and No. 28 (2010) on the core obligations of States parties under article 2 of the Convention. She also mentions jurisprudence of the European Court of Human Rights.

[8] The author refers to the concerns and recommendations of the Committee pertaining to article 5 in its concluding observations on the seventh periodic report of the Russian Federation (CEDAW/C/USR/CO/7).

3.4 The author submits that she was deprived of an effective remedy and access to compensation and rehabilitation, in violation of article 2 (b) and (e) of the Convention, read in conjunction with article 1. She stresses that her attempts to seek redress and obtain a judicial review of the decisions not to investigate were futile, given that the proceedings were discontinued by the courts. She also submits that, in any case, judges reviewing an investigator's decisions pursuant to article 125 of the Code of Criminal Procedure are not entitled to direct an investigator's actions, nor can they invalidate an investigator's decisions or order an investigator to do so.[9] According to her, this does not constitute an effective remedy.

3.5 Regarding the exhaustion of domestic remedies, the author contends that any remaining available remedies would be unreasonably prolonged and unlikely to bring effective relief in the light of the "never-ending circle of impunity" that she has already faced. She did not lodge an appeal against the decision of the City Court of 23 December 2013[10] because such an appeal would only fail, given the obligation of the Court to discontinue the proceedings if the impugned decision had already been quashed by the head of the investigating agency. She also submits that this appeal is akin to a supervisory review, which was previously held not to constitute an effective remedy in the Russian Federation by the Human Rights Committee and the European Court of Human Rights.

State party's observations on admissibility and the merits

4.1 The State party provided its observations on admissibility and the merits in a note verbale dated 21 January 2015. It submits that, on 25 November 2013, the Kalininsky district investigating agency refused to initiate criminal proceedings into the author's allegations of rape owing to a lack of *corpus delicti*. The State party submits that, during the preliminary investigation, it was established that the author and V.S. had first met on 10 June 2012. They began to interact through the Internet and later saw each other on occasion. On 4 July, the author lent V.S. some 2,000 roubles ($33). She went to his apartment upon his invitation, and V.S. had sexual intercourse with her without resorting to physical force or threats. The author claims that she did not resist physically because she feared his aggression, given that he was drunk. V.S. left the apartment and she remained alone in his room. At that moment, she could have asked the neighbours for help, contacted the police (she had a working mobile phone) or left the apartment, given that V.S. had left her the keys. After the events in question, the author has not seen V.S. again, notwithstanding her numerous attempts to collect her loan, because other people responded to her telephone calls to him. V.S. denied that the author had been in his apartment and that he had had sexual intercourse with her.

4.2 On 3 December 2014, the investigator's decision was quashed by her superior and the case sent back to be investigated again, which was still ongoing as at the time of the State party's submission. Appearing before the District Court, the author's counsel appealed against the decisions of the Kalininsky district investigating agency of 19 February 2012, 21 February 2013 and 16 May 2014 to refuse to launch criminal

[9] The author refers in this regard to an instructive interpretation of the relevant provisions (art. 125 of the Code of Criminal Procedure), which can be found in the resolution of the plenum of the Supreme Court of the Russian Federation of 10 February 2009, No. 1, para. 21.

[10] Pursuant to chapter 47.1 of the Code of Criminal Procedure.

proceedings into the author's allegations of rape. On 27 February, 8 May and 11 July, the District Court discontinued the proceedings because the head of the district investigating office had quashed the decision while instructing the investigator to conduct another preliminary examination. During the period 2013-2014, the staff and management of the investigating agency were held to be disciplinarily and materially accountable on the basis of the prosecutor's actions.

4.3 The State party challenges the author's assertion that it has not fully implemented the Convention because it has not introduced in its criminal legislation a definition of rape that complies with international law, given that articles 131 and 132 of the Criminal Code do not link the establishment of a lack of consent with prosecution, thus preventing prosecution in cases of non-consensual sexual intercourse without the use of physical force. According to the author, her rape was therefore not investigated and the alleged perpetrator not sanctioned, which amounts to discrimination on the grounds of sex. In this regard, the State party claims that, at the time of the initial submission of the communication to the Committee, in April 2014, the author had not exhausted all domestic remedies because the investigator's decision to refuse to launch criminal proceedings had been quashed and the case returned for a fresh investigation to be carried out.

4.4 With regard to the merits, the State party submits that the author's interpretation of articles 131 and 132 of the Criminal Code is incorrect. It refers to resolution No. 11 of 15 June 2004 of the Supreme Court on the application of those articles by the State party's courts. The courts therefore have to establish in each case of rape (art. 131) or violent sexual assault (art. 132) whether the perpetrator has used violence or the threat of violence against the victim or others or the helpless state of the victim. According to the resolution, it is to be established whether the perpetrator has been aware of the victim's helpless state. In assessing whether the victim has been in a helpless state that excludes giving consent to sexual intercourse, courts are advised to base their conclusions on the evidence on file, including the expert opinion when one is necessary to establish the psychological and physical state of the victim. The State party contends that articles 131 and 132 use gender-neutral language and contain sanctions. The provisions are therefore not discriminatory, are not based on stereotypes or biased against gender and do not violate the Convention.

4.5 The State party submits that compelling a person to commit sexual acts without using violence or the threat of violence in specific circumstances amounts to a crime under article 133 of the Criminal Code.[11] It argues that, given established

[11] Article 133 on the compulsion to perform sexual acts states the following:

1. Compulsion of a person to enter into illicit relations, pederasty, lesbianism or the commission of other sexual actions by means of blackmail, threat of destruction, damage or taking of property, or with the use of material or any other dependence of the victim, shall be punishable by a fine in the amount of up to 120,000 roubles or in the amount of a wage/salary or other income of the convicted person for a period of up to one year, or by obligatory labour for a term of up to 480 hours, or by corrective labour for a term of up to two years, or by compulsory labour for a term of up to one year, or by deprivation of liberty for the same term.

case law, the formal absence in articles 131 and 132 of the element of "lack of consent of the victim" does not prevent the qualification of the acts as rape or sexual assault when this circumstance is established by the evidence in a specific case. The State party concludes that the author's claim concerning the incompatibility of articles 131 and 132 with the international norms of protection of women against discrimination on the grounds of gender is without merits, given that her interpretation of these provisions is incorrect.

Additional information provided by the author

5.1 On 10 April 2015, the author submitted additional information, claiming that she and her family had been intimidated by the authorities, in particular owing to the submission of her communication to the Committee. She requests the Committee to take all measures possible in accordance with article 5 (1) of the Optional Protocol and protect her as a victim of sexual violence from further secondary victimization and reprisals from the authorities. She states that, on 24 February, she was again interrogated by the same investigator who previously did not launch criminal proceedings into her allegations of rape. On the same day, the author lodged a request to disqualify that investigator from conducting the investigation into her case, which was dismissed by the head of the investigating agency.

5.2 According to the author, her interrogation was conducted in a humiliating and harsh manner, with the investigator asking her questions that she had already answered when first questioned in 2012 and persistently asking identical questions in different ways, including several questions about her private life. In addition, the investigator repeatedly demanded an explanation for why the author had lodged a complaint with the Committee. When the author could not recall specific details of the event, the investigator raised her voice while clearly expressing doubts about the author's mental health and professional competence and repeatedly voiced her conviction that no element of crime could be found in the author's case. Eventually, the investigator demanded that the author undergo a lie detector test to ensure the veracity of her statements and made it clear that no such test would be required of the alleged perpetrator. The investigator also sent telegrams to the author's mother inviting her to provide details in respect of the alleged rape of her daughter.

5.3 The author also reports that, on 7 April 2015, an unknown person came to her apartment and introduced himself, without giving his name, as a police officer of the sixteenth precinct of the Vasileostrovsky district of Saint Petersburg. When the author asked about the purpose of his visit, he at first refused to answer, eventually responding rudely that "he needed to perform some action in respect of the author's criminal complaint". When, confused and frightened, the author called her lawyer, the man left.

2. The same deed committed in respect of a minor boy (minor girl) shall be punishable by compulsory labour for a term of up to five years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to three years or without such or by deprivation of liberty for a term of up to five years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to three years or without such.

Author's comments on the State party's observations on admissibility and the merits

6.1 On 5 June 2015, the author submitted her comments on the State party's observations and elaborated on further factual developments. According to her, on 25 November 2013, the same investigator from the Kalininsky district investigating agency refused to open a criminal case into her allegations of rape. The investigator recounted her previous decisions, which had been quashed by her superiors. She recalled the author's narrative of the sexual abuse and the alleged perpetrator's explanations and concluded that the versions of events were contradictory, refusing to open a criminal case owing to a lack of *corpus delicti*. No further reason for the decision was provided. The author's counsel received a copy of the investigator's negative ruling in 2014.

6.2 The author adds that, on 24 February 2015, she was called again to testify before the same investigator. Her request for the recusal of the investigator was rejected by the investigator's superiors. After a complaint was lodged by the author's counsel, the acting district prosecutor explained that, on 12 January 2015, the investigator had again refused to open a criminal case.[12] On 22 January, that ruling was quashed by the investigator's superior, a deputy chief of the Saint Petersburg investigation department.[13]

6.3 The author further explains that, on 2 March 2015, the same investigator refused to open a criminal case. The wording of the relevant order is essentially the same as that of the ruling of 25 November 2013 and includes a restatement of the versions of events provided by the author and the alleged perpetrator without any analysis or conclusions by the investigator. The ruling of 2 March was forwarded to the author and to the alleged perpetrator under the same cover letter signed by the investigator, thus revealing to the alleged perpetrator the author's home address in Saint Petersburg. On 13 March, the investigator's ruling was again quashed by her superior.[14] On 23 March, the deputy head of the Kalininsky district investigating agency informed the author that her request for the recusal of the investigator had been rejected. On 13 April, the investigator decided once more not to have a criminal case opened. In addition to her previous recounting of the versions of events provided by the author and the alleged perpetrator, the investigator listed the author's medical condition in the text of her decision, which she sent under the same cover letter to the author and the alleged perpetrator, thus disclosing not only the author's address, but also her medical data to the alleged perpetrator. The author maintains that, while the final outcome of the proceedings at the national level remains unknown to her, the numerous complaints that she has lodged have not led to a proper criminal investigation by the authorities.

6.4 The author argues that the authorities' response to her allegations has followed the same pattern during the period 2012-2015, namely, the investigator, having questioned the author, issued a decision not to open a criminal case, followed by the

[12] The ruling of 25 November 2013 had allegedly also been quashed by the investigator's superiors.

[13] Notwithstanding persistent requests in writing, the author was not served with copies of the investigator's ruling of 12 January 2015 and the order of 22 January 2015 of the investigator's superior quashing that ruling.

[14] This order has not been transmitted to the author or her counsel.

superior's decision to quash the investigator's ruling, only to allow the same investigator to issue a similarly worded refusal. The author's attempts to seek redress before the District Court and, on appeal, before the City Court did not succeed in breaking that vicious circle, given that the courts always discontinued proceedings after the impugned decision of the investigator had been quashed by her superiors.

6.5 In the author's opinion, these legal formalities are intended to hide the fact that the authorities did not carry out any meaningful investigation into her well-founded allegations of sexual abuse committed against her. The author therefore challenges the argument of the State party regarding the non-exhaustion of domestic remedies and claims that these remedies are both unreasonably prolonged and unlikely to bring effective relief, within the meaning of article 4 (1) of the Optional Protocol.

6.6 The author notes that the legislative definition of rape in the State party's law has not changed in its essence since 1926.[15] The same constituent elements of the crime are present in the definitions of rape and sexual assault in articles 131 and 132 of the Criminal Code. The focus on the violence or the threat of violence used against the victim rather than on the absence of consent to sexual intercourse is not in compliance with applicable international legal standards.[16] The author highlights the Committee's jurisprudence that the definition of rape in national legislation should be reviewed so as to place lack of consent at its centre.[17]

6.7 On the merits, the author argues that the State party's argument regarding resolution No. 11 of 15 June 2014 of the Supreme Court on the application of articles 131 and 132 of the Criminal Code only reinforces her argument that Russian criminal legislation (and, therefore, the investigators', prosecutors' and courts' actions) focuses on evidence of the use of violence against the victim and not on establishing the lack of consent. Such an approach is deemed incorrect by the author and is evidenced by the numerous refusals to investigate her claims further. The author refers to the decision of 16 May 2013, whereby the investigator observed: "In order to bring charges under articles 131 and 132 of the Criminal Code, according to the legislation, it is not enough to establish the victim's lack of consent to enter into sexual intercourse. A necessary element of *corpus delicti* is the application of violence or threat of using against the victim."

6.8 The author submits that, in the State party, it is impossible to investigate sexual abuse committed in the absence of violence or the threat of violence in cases of non-consensual sexual intercourse. She maintains that the State party has violated

[15] According to the State party's criminal codes of 1926 and 1960 (the latter was in force until 1996), rape could have been committed only with the use of force or the threat of force against the victim or exploiting her "helpless condition". The same constituent elements of the crime are present in the definitions of rape and sexual assault in articles 131 and 132 of the current Criminal Code.

[16] In this regard, the author refers to *Vertido v. the Philippines* (note 7 above) and communication No. 34/2011, *R.P.B. v. the Philippines*, views adopted on 21 February 2014. She also refers to European Court of Human Rights case law, notably *M.C. v. Bulgaria*, application No. 39272/98, para. 159, in which the Court pointed out "that in case-law and legal theory lack of consent, not force, is seen as the constituent element of the offence of rape".

[17] See *Vertido v. the Philippines* (note 7 above), para. 8.9 (b) (i).

its positive obligation to establish and effectively apply a criminal law system that provides for the punishment of sexual abuse against women. According to the author, the State party's criminal law and the practice of its investigators and courts are not in compliance with the standards of international law.

6.9 The author notes the State party's reference to article 133 of the Criminal Code, which criminalizes the compulsion of a person to commit sexual acts by means of blackmail, threat of destruction, damage or taking of property, or by taking advantage of the material or any other dependence of the victim, and argues that, given the circumstances of the sexual abuse that she suffered, this provision is not applicable in her case. If the authorities had opted for its applicability, however, they could have brought charges thereunder.

6.10 The author reiterates that the investigator's actions led to her revictimization. Questions such as the number of her partners and the age at which she began to have sexual relations were irrelevant. The author emphasizes that, after submitting her communication to the Committee, the same investigator questioned her again in a harsh and inadequate manner, her apartment was visited by a police officer and information about her home address and medical condition was revealed to the alleged perpetrator. These actions and omissions confirm that the authorities do not understand the vulnerability of the victims of sexual abuse and do not take measures to avoid their further victimization. The author alleges that she suffered additional distress and psychological trauma owing to the way in which her case was handled.

6.11 The author submits that the authorities failed to conduct an effective investigation into her well-founded and substantiated allegations. In particular, the investigator failed to order her forensic examination at the critically important initial stage of the proceedings, never questioned the alleged perpetrator's flatmate, who may have been an eyewitness to the events, and failed to conduct an impartial context-sensitive assessment of the surrounding circumstances. During questioning, the author informed the investigator that she had received psychological counselling as a victim of rape at the Crisis Centre for Women in Saint Petersburg, an NGO, yet the investigator failed to take that into consideration and limited her actions to the repeated questioning of the author in a particularly intimidating manner. The investigative authorities never instituted criminal proceedings and their investigative efforts remained limited to a pre-investigation inquiry. In this regard, the author refers to the jurisprudence of the European Court of Human Rights highlighting that the Court "regarded such a legal framework as inadequate, as it undermined the quality of evidence collected and the applicants' right to effective participation in the proceedings in the absence of the procedural status of 'victim'". In the procedure of pre-investigation inquiry used by the authorities, the alleged perpetrator or potential witnesses provide explanations that do not commit them in the same way as in criminal proceedings and do not entail the necessary safeguards inherent to an effective criminal investigation.

6.12 The author requests the Committee to recommend that the authorities: (a) properly investigate the case of sexual abuse committed against her and effectively investigate, charge and prosecute the alleged perpetrator; (b) amend articles 131 and 132 of the Criminal Code and criminalize all instances of sexual abuse, with an emphasis on the lack of consent by the victim; (c) pay her compensation for immaterial damages and her legal costs and expenses in the

national proceedings and the proceedings before the Committee; and (d) provide appropriate training for judges, lawyers and law enforcement officers on the Convention and its general recommendations and on an understanding of the crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid the revictimization of women who report cases of rape.

State party's additional observations

7.1 By a note verbale of 23 November 2015, the State party submits that its criminal law considers that gender-based violence takes place against the will of the victim. Although articles 131 and 132 of the Criminal Code do not include explicitly the element of "lack of consent of the victim", these provisions are applied in that sense. The use of violence or the threat of violence evidences that the victim's will is overpowered and the sexual intercourse is forced upon the victim. The law does not, however, require the victim to resist.

7.2 The State party reiterates its earlier observations concerning the interpretation of articles 131 and 132 with reference to resolution No. 11 of 15 June 2004 of the Supreme Court on the application of those articles by the State party's courts.

7.3 It challenges the author's allegations of insufficient motivation with regard to the decisions of the investigator of 25 November 2013 and 2 March 2015 to refuse to launch criminal proceedings against the alleged perpetrator. It points out that the opinion of the medical expert is in line with the requirements of the Code of Criminal Procedure. It submits that no grounds were established for the recusal of the investigator. Moreover, according to articles 61 and 67 of the Code, such recusal is possible at the criminal proceedings stage and not at the pre-investigation stage.

7.4 The State party also challenges the author's allegations of improper and degrading behaviour on the part of the investigator. It indicates that the author's counsel submitted a complaint in this regard on 31 March 2015, which was rejected on 29 April and not subject to appeal. With regard to the additional questioning of the author, the State party notes that, under article 38 of the Code of Criminal Procedure, an investigator is authorized to self-direct the course of the investigation and choose the questions that would allow the facts and circumstances of the case to be established. The State party claims that the investigator's questioning of the author's number of sexual partners and the age at which she became sexually active were justified because these circumstances are "essential and their establishment is mandatory in the pre-investigation inquiries of crimes of a sexual nature". In the present case, that the author had numerous partners before V.S., that the sexual intercourse took place on 4 July 2012 after they had met on 10 June 2012 and that she was favourable to his advances (e.g., the duration of their connection before the sexual intercourse, that they spent leisure time together in an intimate arrangement at late-night hours and that they kissed), coupled with her refusal to undergo a lie detector test, cast well-founded doubts about the forced nature of the sexual intercourse.

7.5 The State party argues that the steps taken by the investigator were conducted in accordance with the Code of Criminal Procedure and that some investigative steps were impossible to carry out, given that the author and members of her family did not cooperate. For example, the author's mother did not appear for questioning and failed to provide an explanation for not doing so, the author did not agree to

undergo a lie detector test and she and her counsel insisted on studying the ruling to have a psychological and physiological examination of the author conducted, which is not permitted at the pre-investigation stage.[18]

7.6 The State party submits that the prolonged investigation of the author's complaints is attributable to behaviour on her part that created genuine obstacles to the effective, expeditious and objective investigation of circumstances of her case. The State party draws attention to the fact that the author underwent a medical examination only on 14 August 2012, more than one month after the alleged incident, and contacted the law enforcement authorities only on 19 September, more than two months after the alleged incident, which led to the loss of evidence, including that of a biological nature. Moreover, the author contacted the medical facility because of a chronic urogenital infection.

7.7 The author's refusal to participate in verification activities to establish the exact location of the alleged incident and her concealment of the exact address[19] prevented the investigation from identifying the possible eyewitness (the flatmate) who was not registered as living at the address. With regard to the disclosure of the author's home address to the alleged perpetrator, the State party notes that the latter had other opportunities to access these data directly from the author during their communication, either on the telephone or through the Internet or common friends.

Issues and proceedings before the Committee concerning admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

8.2 With regard to article 4 (1) of the Optional Protocol, the Committee recalls that authors must use the remedies in the national legal system that are available to them and that would enable them to obtain redress for the alleged violations.[20] It notes the State party's argument that the communication ought to be declared inadmissible for non-exhaustion of domestic remedies because, by the time that the communication was submitted to the Committee in April 2014, the investigator's decision to refuse to initiate criminal proceedings had been quashed and the case returned for additional investigation. The Committee notes that the author had not lodged an appeal against the decision of the Saint Petersburg City Court of

[18] Article 198 of the Code of Criminal Procedure on the rights of the suspect, the accused, the victim and the witness in an appointment and the performance of a court examination states the following:

1. If a court examination is appointed and carried out, the suspect, the accused and his counsel for the defence shall have the right:
   1) To study the resolution on an appointment of a court examination;
   ...
2. The witness and the victim with respect to whom the court examination was carried out shall have the right to study the expert's conclusion. The victim shall also enjoy the rights stipulated by items 1 and 2 of the first part of this article.

[19] It transpires that, in her initial criminal complaint, the author provided the address but was not able to indicate the exact apartment. However, she expressed readiness to show the location of the apartment. Later, in the course of the investigation, she refused to take part in verification activities aimed at establishing the exact location of the apartment.

[20] See *Vertido v. the Philippines* (note 7 above), para. 6.2.

23 December 2013, arguing that such an appeal would fail, given the obligation of the Court to discontinue the proceedings if the investigator's decision had already been quashed by the head of the investigating agency. The Committee also notes the author's claims that her attempts to seek redress and obtain a judicial review of the decisions not to investigate were futile, given that the proceedings were discontinued by the courts and that judges reviewing an investigator's decision pursuant to article 125 of the Code of Criminal Procedure are not entitled to direct an investigator's actions, nor can they invalidate an investigator's decision or order an investigator to do so. The Committee further notes the author's argument that the domestic remedies were unreasonably prolonged and unlikely to bring effective relief within the meaning of article 4 (1) of the Optional Protocol. The Committee notes that the most recent investigator's refusal, on 13 April 2015, to open a criminal case has not been challenged by the author. It also takes note of her argument that her "numerous complaints have never triggered proper criminal investigation on the part of the Russian authorities".

8.3 The Committee notes that, regarding the effectiveness of the preliminary investigation, subsequent investigative actions were taken each time after the head of the investigating agency had quashed the negative decision of the investigator, sent the case file material back and ordered that an additional investigation be carried out. In this connection, the Committee also notes that, as it transpires from the case file material, on 19 April 2013, the head of the Kalininsky district investigating agency ordered the case materials to be returned for an additional inquiry aimed at establishing the exact location of V.S. and at hearing his explanation of the author's claims. It further notes that, on 3 July 2013, the head of the Kalininsky district investigating agency ordered the case materials to be returned so that an additional preliminary examination could be conducted, in particular to establish the exact number of the apartment where the alleged sexual violence had taken place and the location of V.S. and to obtain his version of the events. On 25 October 2013, the head of the Kalininsky district investigating agency ordered an additional preliminary investigation to be conducted to establish whether V.S. had an alibi for the date when the incident had taken place and whether the author had been threatening V.S. that she would contact the police if he did not return the money that she had lent to him, and to identify P., the flatmate of V.S., and her whereabouts and conduct a gynaecological examination of the author. The Committee notes the numerous investigations conducted or which the investigator attempted to conduct and observes that the author refused to participate in verification activities (e.g., she refused to participate in the verification activity aimed at identifying the exact location of the flat where the alleged incident had occurred, which would allow the investigation to identify the possible witness, P.). In the light of these considerations, the Committee, looking into all circumstances read as a whole, considers that, in the present case, the State party's investigative process could not be categorized as improper or otherwise ineffective. Given these circumstances, the Committee considers that it is precluded by article 4 (1) of the Optional Protocol from examining the present communication.

8.4 In the light of this conclusion, the Committee will not examine admissibility on any other grounds.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (1) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.